

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID NELMS,

Petitioner,

v.

**Case No. 2:16-cv-0160
JUDGE GEORGE C. SMITH
Magistrate Judge King**

**WARDEN, NORTH CENTRAL
CORRECTIONAL COMPLEX,**

Respondent.

ORDER

This is an action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 18, 2017, the United States Magistrate Judge recommended that the remaining claims be dismissed as either procedurally defaulted or without merit. *Report and Recommendation*, ECF No. 19. Objections to that recommendation were due June 1, 2017. On June 6, 2017, the *Report and Recommendation* was adopted without objection. *Order*, ECF No. 20. Final judgment was entered that same date. *Judgment*, ECF No. 21. This matter is now before the Court on *Petitioner's Motion for Reconsideration*, ECF No. 22.

In his motion, Petitioner represents that he timely submitted objections to *the Report and Recommendation*. Indeed, it appears that Petitioner submitted his objections, with attached exhibits, to prison officials for mailing on May 30, 2017. His objections were mailed to the Magistrate (but not to the Clerk) on June 1, 2017, and were received on approximately June 5, 2017. Under these circumstances, Petitioner's objections were timely. *See Houston v. Lack*, 487 U.S. 266 (1988).

Petitioner's Motion for Reconsideration, ECF No. 22, is **GRANTED**. The order adopting the *Report and Recommendation*, ECF No. 20, as well as the judgment entered in this case, ECF No. 21, are **VACATED**.

This case is **RESTORED** to the active docket of the Court, and the *Report and Recommendation*, ECF No. 19, is restored as a pending motion.

The Clerk is **DIRECTED** to file Petitioner's objection, with attached exhibits. If Respondent intends to respond to Petitioner's objection, Respondent shall do so within fourteen (14) days of the date of this *Order*.

IT IS SO ORDERED.

s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT